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THE HONORABLE FRED VAN SICKLE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

JAMES S. GORDON, JR,

Plaintiff,

v.

IMPULSE MARKETING GROUP, INC.,

Defendant

IMPULSE MARKETING GROUP, INC.,

Third Party Plaintiff

v.

BONNIE GORDON, JAMES S. GORDON, III, JONATHAN GORDON, JAMILA GORDON, ROBERT PRITCHETT, EMILY ABBEY, and LEW REED

Third Party Defendants

NO. CV-04-5125-FVS

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S STATEMENT OF FACTS

Jury Trial Demanded

COMES NOW the Plaintiff, James S. Gordon, Jr., and files this

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memorandum in opposition to Defendant's motion to strike Plaintiff's statement of facts.

Included with the Defendant’s Response to Plaintiff’s Statement of Material Facts is language that purports to be a “motion” to strike Plaintiff’s Statement of Material Facts. The Plaintiff hereby respectfully requests that the Court decline this request on both procedural and substantive grounds.

Substantively, the Defendant’s allegation that the Plaintiff’s Statement of Material Facts “fails to set forth Plaintiff’s facts in a serial fashion” is simply false. The Plaintiff’s statement (dkt. 97) consists of consecutively numbered, declarative statements, each with a specific citation to the record. A simple reading of the statement thus demonstrates that the facts are set forth in serial fashion, as required by the rule. The Defendant’s other claim is that the statement does not comply with LR 56.1 because it contains “narrative and comment” and “inappropriate argument and legal conclusions.” However, the Plaintiff’s statement was filed concurrent with the Plaintiff’s reply. Accordingly, it followed the instructions of LR 56.1(c) which explicitly invites exactly the type of comment, argument, and conclusions about which the Defendant complains. Even if the Court applies the requirements of LR 56.1(a), there is nothing in the rule that prohibits comment,

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argument, and conclusions as long as the facts themselves are set forth in serial fashion. Plainly, the statement complies with both the spirit and the letter of the rule.

Procedurally, the Defendant's "motion" should be denied because it fails to follow the local rules. One would think that since the Defendant's motion is a complaint about compliance with the local rules, the Defendant would have been careful to comply with those same local rules when bringing their motion. Unfortunately, they didn't. Specifically, LR 7.1(h) requires that any party filing a motion "shall also file a notice setting the time, date and place for a hearing on the motion." The Defendant's Response to Plaintiff's Statement of Material Facts contains no such notice, nor does it even purport to set a time, date or place for a hearing on the motion. LR 7.1(b) requires the moving party "shall serve and file with the motion a memorandum setting forth the points and authorities relied upon in support of the motion." Assuming that the Defendant's Response to Plaintiff's Statement of Material Facts is itself a motion, then no memorandum of points and authorities has ever been filed. Accordingly, under LR 7.1(h)(5), the court may consider this failure as consent on the part of the Defendant "to the entry of an Order adverse" to the Defendant. Alternatively, assuming that the Defendant's

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Response to Plaintiff's Statement of Material Facts is itself a memorandum of points and authorities, then no motion has ever been filed. Either way, the Defendant's have failed to comply with the rule, and the Court should enter an Order adverse to the Defendant.

Plaintiff respectfully requests that the Court deny the Defendant's motion to strike these facts.

DATED this 21st day of October, 2005

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Certificate of Service

I hereby certify that on October 21, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Floyd Ivey, Peter J. Glantz, Sean Moynihan. I hereby certify that I have served the forgoing to the following non-CM/ECF participants by other means: Bonnie Gordon, Jonathan Gordon, James S. Gordon, III, Robert Prichett, Emily Abbey and Jamila Gordon.

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